



San Diego City Attorney **MICHAEL J. AGUIRRE**

MEDIA ADVISORY

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Contact: Maria Velasquez, Communications Director: (619) 235-5725 mvelasquez@sandiego.gov

U-T AGAIN GETS IT WRONG—AGUIRRE CORRECTS INACCURACIES ON EXCESS PENSION PAYMENTS STORY

San Diego, CA—City Attorney Michael Aguirre is again cautioning the news media and public to cast a wary eye on the accuracy of the *San Diego Union-Tribune's* (*U-T*) reporting contained in today's article, "*Auditors hired by city fear lawsuit by Aguirre.*"

According to the *U-T*, the City of San Diego has been making payments to retired employees that exceed Internal Revenue Code Section 415 through a separate pension fund specifically set up to make those payments. In actuality, the San Diego City Employees' Retirement System (SDCERS) is the entity that has been illegally making the excess pension payments of more than \$8 million in direct violation of IRS code.

In a December 5, 2007 memo from Jay Goldstone to the City Council, Mr. Goldstone conceded that fact:

"There is no doubt that SDCERS illegally paid out benefits in excess of section 415 limits from the qualified pension plan."

This admission has also been made by SDCERS officials at a Rules Committee hearing on December 6, 2007 and by the City's outside auditor Macias Gini & O'Connell (Macias Gini) at an Audit Committee meeting on Tuesday, November 27, 2007.

In today's article the *U-T* also characterized IRS Code Section 415 as "an obscure tax rule." However, San Diego's Municipal Code makes direct reference to it in a section entitled *Compliance with Certain Internal Revenue Code Provisions*, SDMC 24.1010 (b).

At issue is the more than \$8 million in pension overpayments to 102 retired City employees that was not disclosed in the City's 2005 Financial Statement which was certified by Macias Gini in October. City Attorney Michael Aguirre has called on the auditor to re-issue corrected financial statements for 2005.

"The City of San Diego is under a federal Cease-and-Desist Order by the U.S. Securities and Exchange Commission to ensure that our financial statements are accurate in all material respects," said City Attorney Aguirre. "Therefore, the financial statements should not go forward without containing all applicable information."

Today's *U-T* article also stated that Macias Gini is concerned that the City Attorney is considering legal
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action against them.

“There is no basis for Macias Gini to believe that I am contemplating a lawsuit,” said City Attorney Aguirre. “In requesting a meeting earlier this week to discuss whether the 2005 financial statement needs to be amended, I suggested that they bring whomever advised them so that we could resolve the matter.”

To view the City Attorney’s *Interim Investigative Report No. 22 The Pension Plans Violations of Internal Revenue Code Section 415(b) - Excess Benefit*, visit www.sandiegocityattorney.org, click “City Attorney Interim Investigative Reports.”

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